

MINUTES OF MEETING
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
January 26, 2012
10:00 a.m.
495 West State Street
Trenton, New Jersey

The meeting was called to order by Chair P. Kelly Hatfield.

Present were:

Commissioners:

John Bonanni
John H. Eskilson
David Jones
Sharon Krengel
Paula B. Voos
Richard Wall

Also present were:

David Gambert, Deputy General Counsel
Mary E. Hennessy-Shotter, Deputy General Counsel
Don Horowitz, Deputy General Counsel
Martin R. Pachman, General Counsel
Annette Thompson, who acted as Stenographer

At the commencement of the meeting, Chair Hatfield, pursuant to section 5 of the Open Public Meetings Act, entered this announcement into the minutes of the meeting:

Adequate notice has been provided by the dissemination of a written "Annual Notice of Meeting."

On December 15, 2011 a copy of such notice was:

(a) prominently posted in a public place at the offices of the Public Employment Relations Commission;

(b) sent to the business offices of the Trenton Times, the Bergen Record, and the Camden Courier Post, as well as to the State House press room addresses of 25 media outlets;

(c) mailed to the Secretary of State for filing; and

(d) posted on the agency's web site.

Furthermore on January 20, 2012, copies of an additional written "Notice of Meeting" were posted and sent in a similar manner. In addition, on January 25, 2012 copies of a "Supplemental Notice of Meeting" were posted and sent in a similar manner.

The first item for consideration was the minutes of the December 15, 2012 meeting. A motion to adopt the minutes was made by Commissioner Krengel and seconded by Commissioner Wall. Commissioner Jones abstained. The motion to adopt the minutes was unanimously approved (Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel, Voos and Wall).

The next item for consideration was the minutes of the December 28, 2012 meeting. A motion to adopt the minutes was made by Commissioner Krengel and seconded by Commissioner Eskilson. Commissioners Jones and Wall were not present because they were recused from voting. Commissioner Voos was not present. The motion to adopt the minutes was unanimously approved (Chair Hatfield, Commissioners Bonanni, Eskilson and Krengel).

Chair Hatfield welcomed Hearing Officer Wendy Young and Daisy Barreto, a new staff agent with the agency. Chair Hatfield reported that there is a Fact-Finding/Mediator/Super Conciliator training session scheduled for January 31, 2012. She concluded by thanking Marty Pachman, Don Horowitz, Mary Beth Hennessy-Shotter, David Gambert, and all the other staff members who helped participate with the rule proposals, adoptions and amendments. Chair Hatfield and General Counsel Pachman extended a special thank you to Don for all his help.

The Counsel's Office distributed a monthly report.

Martin Pachman, General Counsel, reported on the Fort Lee and PBA case, the CWA and Civil Service Commission case, and the Salem Community College and Salem Community Support Staff case.

Don Horowitz discussed the proposed rule changes on the agenda, stating that the information forwarded to the Commissioners explained in summary what the Interest Arbitration and Interim Relief rule proposals and the Super Conciliation rule adoption were all about.

The first item for consideration was the Adoption of New Rules: Super Conciliation - Health Benefits Plan Design and Pension Committees: N.J.A.C. 19:12A. Commissioner Eskilson moved to adopt the new rules and Commissioner Bonanni seconded. Commissioner Jones recused himself because he sits on one of the committees. The motion to adopt the new rules was unanimously approved (Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel, Voos and Wall).

The next item for consideration was the Proposed Amendments - Interim Relief Proceedings: N.J.A.C. 19:14-9.1 through N.J.A.C. 19:14-9.5. Commissioner Eskilson moved to adopt the proposed amendments and Commissioner Jones seconded. The motion was unanimously approved (Chair Hatfield, Commissioners Bonanni, Eskilson, Jones, Krengel, Wall and Voos).

The next item for consideration was the Proposed Readoption with Amendments - Interest Arbitration in Public Police and Fire Departments: N.J.A.C. 19:16. Commissioner Eskilson moved to adopt the proposed readoption with amendments to conform rules to statutory language and Commissioner Kregel seconded. The motion was unanimously approved (Chair Hatfield, Commissioners Bonanni, Eskilson, Jones, Kregel, Wall and Voos).

Commissioner Bonanni excused himself from the meeting at this time.

The first case for consideration was the draft decision in North Hunterdon-Voorhees Regional School Board of Education and North Hunterdon-Voorhees Education Association, Docket No. SN-2011-063. Commissioner Voos moved the draft decision and Commissioner Eskilson seconded the motion. The motion to adopt the decision was unanimously approved (Chair Hatfield, Commissioners Eskilson, Jones, Kregel, Voos and Wall).

Commissioner Bonanni returned to the meeting.

Next for consideration was the draft decision in Hudson County Prosecutor's Office and PBA Local 232, Docket No. IA-2009-059. Commissioner Eskilson moved the draft decision and Commissioner Jones seconded the motion. Commissioner Wall recused himself because of his affiliation with the PBA. The motion to adopt the decision was unanimously approved (Chair

Hatfield, Commissioners Bonanni, Eskilson, Jones, Krengel and Voos).

Next for consideration was the draft decision in City of Atlantic City, Atlantic City Police Benevolent Association, Local 124 and Atlantic City Superior Officers' Association, Docket Nos. SN-2011-008 & SN-2011-009. Commissioner Eskilson moved the draft decision and Commissioner Bonanni seconded the motion.

Commissioner Wall recused himself because of his affiliation with the PBA. Commissioner Jones stated he did not feel taking compensatory hours away from employees is not right. Mr. Pachman responded that the preemption doctrine is what the preemption doctrine is. There are circumstances since the beginning of the PERC law where negotiations were made in good faith and then later on as the law develops or as statutes change, things that were appropriate that were part of the old contract may no longer be appropriate. Commissioner Jones responded that he feels it is the responsibility of the Commission to look at the totality of the circumstances and try to correct the inequity. Mr. Pachman responded that the Commission can only deal with what the law permits us to deal with, which is the negotiability of the subject matter in the context of a statutory preemption.

Commissioner Jones stated that an arbitrator could resolve this issue. Mr. Pachman responded that if an arbitrator rules on something that clearly violates the law under the arbitration

act, that arbitration decision could be reversed by the courts and probably would be. Commissioners Krengel and Voos agreed with Commissioner Jones and feel this issue should be resolved by an arbitrator. Chair Hatfield responded that PERC is not the venue to resolve this issue. The motion to accept the draft decision resulted in a tie vote. Three in favor (Chair Hatfield, Commissioners Bonanni and Eskilson), and three opposed (Commissioners Jones, Krengel and Voos).

Next for consideration was the draft decision in City of Trenton and Trenton Fire Officers Association, Docket No. SN-2011-031. Commissioner Eskilson moved the draft decision and Commissioner Wall seconded the motion. Commissioner Krengel stated that she feels the TFOA has a point. She said that in the past positions were filled in accordance with their contract language. Don Horowitz responded that the TFOA's grievance is seeking that positions be permanently filled in accordance with the existing civil service list. The law is that, depending on the circumstances, a dispute over who should fill a promotional position on an interim basis, until a permanent appointment is made, can be resolved by an arbitrator. However with regard to permanent appointments and promotions, the Supreme Court in City of Paterson and Paterson Police PBA, 87 N.J. 78 (1981), the first case to consider permissive negotiability, held that a grievance challenging a decision to fill or leave vacant a permanent

position was not legally arbitrable. Commissioner Eskilson commented that it is management's prerogative whether or not to fill the positions. Commissioner Jones stated that management is circumventing the collective bargaining agreement by using the term "interim" and that is why he feels an arbitrator could make a ruling on the staffing issues. Commissioner Voos stated the union is alleging that firefighters are performing the work. The Superior Officers Association has made a claim that they do not represent the individuals who are filling interim positions, but they would represent them if they were promoted. Chair Hatfield responded that this agency has found over the years that minimum staffing issues are not negotiable. The motion to adopt the draft decision was approved by a vote of four in favor (Chair Hatfield, Commissioners Bonanni, Eskilson and Wall), and three opposed (Commissioners Jones, Krengel and Voos).

Next for consideration was the draft decision in Howell Township Board of Education and Howell Township Education Association, Docket No. SN-2011-058. Commissioner Bonanni moved the draft decision and Commissioner Wall seconded the motion. Commissioner Krengel had a question about the union's demand for compensation which she believes the union has raised in this case. Commissioner Jones agreed with Commissioner Krengel that a compensation claim had been raised. Mr. Pachman and Mr. Horowitz responded, noting that the grievance documents and undisputed

background facts do not indicate that a claim for compensation, severable from the grievance seeking adherence to class size limits, was made and that the Association did not submit a certification based on personal knowledge, as required by the rules, to bolster that claim. Absent such a showing, Mr. Pachman noted, the cases cited in the Association's brief do not apply here. He also observed that, in scope of negotiations cases, the Commission cannot find the facts or bolster the cases made by either party. It can only assess the facts presented to determine what issues are actually raised and determine if those issues are arbitrable. The motion to adopt the draft decision was approved by a vote of four in favor (Chair Hatfield, Commissioners Bonanni, Eskilson and Wall), and three opposed (Commissioners Jones, Krengel and Voos).

Next for consideration was the draft decision in Borough of Oakland and United Public Employees Union, Local No. 1, Docket No. SN-2011-066. Commissioner Eskilson moved the draft decision and Commissioner Wall seconded the motion. The motion to adopt the decision was unanimously approved (Chair Hatfield, Commissioners Bonanni, Eskilson, Jones, Krengel and Voos).

Deputy Generals Counsel Don Horowitz and Mary E. Hennessy-Shotter left the meeting at this time.

Next for consideration was the draft decision in Camden County and Camden County Prosecutor and Camden County Assistant

Prosecutor's Association, Docket No. CO-2009-076. Commissioner Wall moved the draft decision and Commissioner Eskilson seconded the motion. Commissioner Jones recused himself because this case involved the Loccke law firm. The motion to adopt the decision was unanimously approved (Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel, Voos and Wall).

Mr. Horowitz and Ms. Hennessy-Shotter returned to the meeting.

Deputy General Counsel David Gambert left the meeting at this time.

Next for consideration was the draft decision in State of New Jersey (Kean University) and Council of New Jersey State College Locals, AFT, AFL-CIO, Docket No. CO-2011-271.

Commissioner Eskilson moved the draft decision and Commissioner Wall seconded the motion. The motion to adopt the decision was approved by a vote of six in favor (Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel, Voos and Wall), and one opposed (Commissioner Jones).

Mr. Gambert returned to the meeting.

The last case for consideration was the draft decision in Borough of Highland Park and PBA Local 64, Docket No. SN-2011-50. Commissioner Voos moved the draft decision and Chair Hatfield seconded the motion. Commissioner Wall recused himself because of his affiliation with the PBA. Commissioner Krengel recused

herself because of her residency in Highland Park. Commissioner Eskilson recused himself because he participates in collective negotiations with the firm of Mets, Schiro & McGovern. The motion to adopt the decision was unanimously approved (Chair Hatfield, Commissioners Bonanni, Jones and Voos).

Commissioner Jones requested that the Commission extend condolences to the family of Charles Marciano in the form of a resolution highlighting his career in public labor relations.

Commissioner Voos made a motion to adjourn the meeting and Commissioner Eskilson seconded the motion. The motion was unanimously approved. The meeting was then adjourned.

The next regular meeting is scheduled to be held on Wednesday, February 29, 2012 at 10:00 a.m.